

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

TIMOTHY MURPHY,
Plaintiff,

v.

TORI SCOTT,
Defendant.

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CIVIL ACTION NO. 5:16-CV-00075

**DEFENDANT TORI SCOTT'S MOTION FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(C)
AND MOTION FOR SUMMARY JUDGMENT**

Exhibit A

Grievance Records with accompanying affidavits, Bates No. 1-7

BUSINESS RECORDS AFFIDAVIT

STATE OF TEXAS

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COUNTY OF WALKER

BEFORE ME, the undersigned authority, personally appeared, Misti Sorenson, who, being duly sworn by me, deposed as follows:

“My name is Misti Sorenson I am over 18 years of age, of sound mind, capable of making this affidavit, and have personal knowledge of the facts herein stated:

I am employed as the Program Supervisor V of Offender Grievance for the Texas Department of Criminal Justice (TDCJ). I am the custodian of the Offender Grievance Records for the TDCJ, and these records were kept in the regular course of business, and it is the regular course of business for an employee or representative of the TDCJ, with knowledge of the act, event, condition, or opinion, recorded to make the record or to transmit information thereof to be included in such record. The record was made at or near the time or reasonably soon thereafter. I have reviewed the grievance records for Offender **Murphy, Timothy** TDCJ #663115, Cause Number 5:16CV00075, for the time period of January 2015 to the present.”

Our records indicate that Offender Murphy, Timothy did file a Step 1 grievance #2016181052 relating to code 599; however, the file copy of this grievance has been misplaced.”

“The records attached hereto are the original or exact duplicates of the originals.”



Misti Sorenson
Program Supervisor V, Offender Grievance
Texas Department of Criminal Justice

SWORN TO AND SUBSCRIBED before me on this the 12th day of August, 2016.





NOTARY PUBLIC in and for
The State of Texas



Texas Department of Criminal Justice

STEP 1

OFFENDER GRIEVANCE FORM

OFFICE USE ONLY

Grievance #: 2016178986Date Received: 7-18-16Date Due: 8-27-16Grievance Code: 500Investigator ID #: IO282

Extension Date: _____

Date Retd to Offender: AUG 02 2016Offender Name: Murphy, Timothy B. TDCJ # 66315Unit: TO Housing Assignment: 34A-OITUnit where incident occurred: Barry Telford (TU) Unit

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Corrections Officers Harden and Heywood When? 10, 17 JULY 2016 (resp.)

What was their response? No non-meat items were made available as substitutes for meat items.

What action was taken? I did not eat lunch

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

On Sun, 10 JUL 2016, Sack Meals were distributed to 3 Bldg. for lunch. The sack meal consisted exactly of one (1) bland, ground beef between sliced, white bread sandwich and one (1) seasoned, ground beef between sliced, white bread sandwich. Corrections Officer Harden distributed the sack meals and double-checked for a meat substitute. There was none.

On Sun, 17 JUL 2016, Sack Meals were distributed to 3 Bldg. for lunch. The sack meal consisted of two (2) bland, ground beef between sliced, white bread sandwiches. Corrections Officer Heywood distributed the sack meals and double-checked for a meat substitute. There was none.

- The issue I am grieving is that the Telford Unit Food Service Department is well aware that because of my religious beliefs and practice, I do not consume animal flesh. Non-meat items including but not limited to, single serving containers of cold cereal, sliced bread, peanut butter and sliced cheese have been available for the provision of a meat substitute (see order pulls from kitchen commissary and vault on 7, 10, 16, 17 July 2016). Even so, no effort has been made to provide meat free sack meals at times when meat inclusive sack meals were distributed compelling me to choose between some basic tenets of my faith and practice, and eating

Action Requested to resolve your Complaint.

Meat-free items/sack meals to be provided its substitute for meat, at approximate equal caloric and nutritional value when meat inclusion (sack) meals are served/distributed

Offender Signature: _____

Date: 18 JUL 2016

Grievance Response: _____

BE advised Food Service Manager IV Captain T Scott states meat free sack meals are provided when sack meals are required. No further action is warranted.

Signature Authority: _____

[Signature]

Wilson

Date: 8-2-16

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. *
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments. *
- ☐ 5. No documented attempt at informal resolution. *
- ☐ 6. No requested relief is stated. *
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. *
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant, Refer to grievance # _____
- ☐ 10. Illegible/Incomprehensible. *
- ☐ 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely Affect the offender's health.

Medical Signature Authority: _____

I-127 Back (Revised 11-2010)

OFFICE USE ONLY

Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
2nd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
3rd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____

Appendix F



Texas Department of Criminal Justice
STEP 2 **OFFENDER**
GRIEVANCE FORM

Offender Name: Murphy, Timothy B. TDCJ# 00663115
 Unit: Telford (TO) Housing Assignment: 3411-OIT
 Unit where incident occurred: Telford (TO)

OFFICE USE ONLY

Grievance #: 2016091123
 UGI Recd Date: MAR 28 2016
 HQ Recd Date: MAR 30 2016
 Date Due: 5-7
 Grievance Code: 500
 Investigator ID#: 11312
 Extension Date: _____

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

Prison Policy 3.01 states that prison units will make available three (3) non-meat meals: Regular; Pork Free; and Meat Free

The Telford Unit inventory makes provisions for peanut butter sandwiches to be served to Diets For Health with very nearly every sandwich meal and cheese sandwiches to those with peanut allergies. Telford inventory also permits the entire population a serving of cold cereal once very nearly every day during extended lockdown periods and provides raisins and/or dried cherries. Thus, the inventory does in fact include provisions for the exceedingly few vegetarian practitioners.

As a Jew, the meat free diet system provides me with the least restrictive means of adhering to kosher food laws practical during my period of incarceration as well as health-based dietary choices.

The response by Food Service Manager Th S Culture (and personal experience by myself) strongly indicate no effort will be made to provide meat free sandwich meals of comparable nutritional and calorie value as meat inclusive sandwich meals during distribution of meat inclusive sandwiches. I have been, following the submission of Grievance # 2016091123, still under the burden of restriction/imprison by the Food Service Dept. of TO Unit to violate my religious beliefs and personal choice as to not eat by its failure to provide me with meat free sandwich meals as stated/denied in "Action Requested" and jeopardize my health by means of continued denial of meals (sandwiches).

I-128 Front (Revised 11-2010)

YOUR SIGNATURE IS REQUIRED ON BACK OF THIS FORM

(OVER)

Appendix G

Offender Signature: _____

Date: 23 MAR 2016

Grievance Response: _____

An investigation has been conducted in to your allegations. Food Service Procedures Manuel 19.01 states this was within policy. Every effort is made when sack meals are provided for meat free and medical sack meals. No further action is warranted by this office.

Signature Authority: _____

K. Ward

Date: APR 29 2016

Returned because: *Resubmit this form when corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible.*
- ☐ 3. Originals not submitted.*
- ☐ 4. Inappropriate/Excessive attachments.*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate.*

CGO Staff Signature: _____

OFFICE USE ONLY

Initial Submission CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

2nd Submission CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

3rd Submission CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

Emergency Grievance - Health Risk



Texas Department of Criminal Justice

STEP 1

OFFENDER
GRIEVANCE FORM

OFFICE USE ONLY

Grievance #: 2016091123Date Received: 2-12-16Date Due: 3-23-16Grievance Code: 500Investigator ID #: T0282

Extension Date: _____

Date Ret'd to Offender: MAR 22 2016

Offender Name: Murphy, Timothy Brian TDCJ # 00663115
 Unit: Telford (TO) Housing Assignment: 3A11 OIT
 Unit where incident occurred: Telford (TO)

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Correction Officer Distributing Such MealsWhen? Midday, March 10 FEB 2016What was their response? "They're all the same, dude."What action was taken? No action taken at this time.

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

- On or about 20 JAN 2016 and again on 02 FEB 2016 I sent Offender Request To Officer (Form T-60) forms to Food Services Department Supervisor, Captain Scott. On each T-60 I stated that I am a vegetarian and politely requested to be provided with Meat Free "Jehany" such meals when with an distributed.
- On 10 FEB 2016, Telford Unit was placed on "Lock Down" status and "Jehany" such meals apparently distributed. No meat free such meals were included among those distributed on 3 Bldg. - A pod.
- The ~~TDCJ~~ TDCJ makes provisions for these specific non-medical diets: Regular; Pork Free; and Meat Free.
- Failing to provide a meat free "Jehany" such for me, Captain Scott (at Food Services Department) has arbitrarily denied me access to meals comparable to regular diet.

I-127 Front (Revised 11-2010)

YOUR SIGNATURE IS REQUIRED ON BACK OF THIS FORM

(OVER)

Appendix F

Action Requested to resolve your Complaint.

To be provided 'meal free meals' externally and internally comparable to meals provided to those who receive regular diets per TDCJ policy.

Offender Signature:

Date: 10 FEB 2016

Grievance Response:

Information received from Food Service Manager II S Cullum reveals Telford inventory does not allow for meat free sack meals during lockdown. No further action is warranted.

Signature Authority:

H. H. H.

Wilson

Date: 3-22-16

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. *
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments. *
- ☐ 5. No documented attempt at informal resolution. *
- ☐ 6. No requested relief is stated. *
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. *
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant. Refer to grievance # _____
- ☐ 10. Illegible/Incomprehensible. *
- ☐ 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: _____

I-127 Back (Revised 11-2010)

OFFICE USE ONLY

Initial Submission UGI Initials: _____
 Grievance #: _____
 Screening Criteria Used: _____
 Date Recd from Offender: _____
 Date Returned to Offender: _____
2nd Submission UGI Initials: _____
 Grievance #: _____
 Screening Criteria Used: _____
 Date Recd from Offender: _____
 Date Returned to Offender: _____
3rd Submission UGI Initials: _____
 Grievance #: _____
 Screening Criteria Used: _____
 Date Recd from Offender: _____
 Date Returned to Offender: _____

Appendix F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

TIMOTHY MURPHY,
Plaintiff,

v.

TORI SCOTT,
Defendant.

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CIVIL ACTION NO. 5:16-CV-00075

**DEFENDANT TORI SCOTT'S MOTION FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(C)
AND MOTION FOR SUMMARY JUDGMENT**

Exhibit B

TDCJ Food Service Procedures Manual with accompanying affidavits, Bates No. 8-13

**AFFIDAVIT
LITIGATION RECORDS REQUEST**

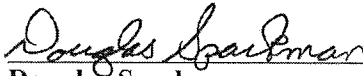
THE STATE OF TEXAS

COUNTY OF WALKER

BEFORE ME, the undersigned authority, on this day personally appeared **Douglas Sparkman**; and after being first duly sworn according to law, upon his oath, deposed as follows:

“My name is Douglas Sparkman, and I am over eighteen years of age, of sound mind, capable of making this affidavit, and I have personal knowledge of the facts herein stated.

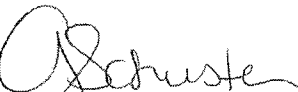
“I am employed as Operations Manager in the Laundry, Food, and Supply Division. I am the custodian of the attached records of the Texas Department of Criminal Justice (TDCJ). These records are kept by the TDCJ in the regular course of business, and it was the regular course of business of the TDCJ for an employee or representative of the Department, with knowledge of the act, event, condition, or opinion recorded to make the record or transmit information thereof to be included in such record; and the record was made at or near the time of the act, event, condition, or opinion or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the originals.”



Douglas Sparkman
Operations Manager
Laundry, Food and Supply Division
Texas Department of Criminal Justice

SWORN TO AND SUBSCRIBED before me by Douglas Sparkman on this 18th day of October, 2017, to certify which witness my hand and seal of office.





Notary Public In and For State of Texas

G. Schuster

Notary's Printed Name



TEXAS DEPARTMENT OF
CRIMINAL JUSTICE

Number 13.07

Date March 2016

Page 1 of 1


Food Service Procedures Manual

Supersedes

September 2015

SUBJECT

MENU SELECTION PLAN

<p>HOW DOES THE MENU SELECTION PLAN WORK?</p>	<p>➤ Any offender may select from one of three menu plans:</p> <ul style="list-style-type: none"> • <u>Regular tray</u> shall provide the offender with all items that are being offered on the serving line. • <u>Meat-free tray</u> shall provide the offender with all items, except for the meat entrée, that are being offered on the serving line. <i>(This plan is often referred to as an ovo-lacto vegetarian diet as it provides milk and eggs but does not provide meat.)</i> • <u>Pork-free tray</u> shall provide the offender with all items, except pork if it is being served, that are being offered on the serving line. <p><i>(Note: TDCJ does not provide a true vegetarian diet due to the inability to meet the offender's nutritional requirements with this type of diet.)</i></p>
<p>CAN A GENERAL POPULATION OFFENDER CHANGE THE TYPE OF TRAY SELECTED?</p>	<p>➤ Yes, a general population offender can select any type of tray and change the selection from meal to meal.</p>
	<p>➤ Offenders who are fed in-cell, who want a tray other than a regular tray, shall notify the ranking security officer by I-60 of their menu plan choice.</p> <ul style="list-style-type: none"> • Once an in-cell fed offender has made a menu plan choice, they shall remain on that menu plan until they request a change using an I-60. • Requests to change menu plans can only be made every six months.
<p>MENU ITEM REPLACEMENTS</p>	<p>➤ When meat or pork is served, one of the three options listed below shall be used to replace the meat or pork that will not be served on the meat-free or pork-free trays. All of these options shall be used and shall be rotated to assure variety in menu item replacement:</p> <ul style="list-style-type: none"> • Option I 1 oz of sliced cheese and an additional 4 oz of the beans being served and an additional serving of the bread being served on the regular tray. • Option II 1 hard-boiled egg and 1 tablespoon of peanut butter and 1 tablespoon of jelly or 1 ounce of mixed peanut butter and jelly and an additional serving of the bread being served on the regular tray. • Option III 1 tablespoon of peanut butter and 1 tablespoon of jelly or 1 ounce of mixed peanut butter and jelly and an additional serving of the bread being served on the regular tray and an additional 4 oz serving of beans being served on the regular tray.



**TEXAS DEPARTMENT OF
CRIMINAL JUSTICE**

Food Service Procedures Manual

Number 12.03
Date September 2014
Page 1 of 2
Supersedes March 2010

SUBJECT

LOCKDOWN MEALS



LOCKDOWN shall be defined as the suspension of activities for 24 hours or more in the living areas, i.e. wings, dorms, cellblocks or rows of cellblocks, in an attempt to restore order, minimize threats to the safety and security of officers or offenders or suppress a serious disruption in the operation of a unit.

**RESPONSIBILITIES OF
THE DEPARTMENT
HEAD**

- ☒ The department head shall be responsible for assuring that all offenders receive wholesome and nutritious meals during a lockdown and if sack meals are provided that they are properly prepared and stored until time of delivery.
- ☒ The department head shall be responsible for coordinating with the warden regarding meal preparation and meal service during the lockdown.
- ☒ As soon as the department is notified of a lockdown, the department head shall be responsible for assuring that production of the next meal is adjusted accordingly.
 - If the meal has already been prepared, the food shall be correctly stored and utilized during the lockdown, if possible.
 - If it is not possible to utilize the prepared food, it shall be properly discarded.
- ☒ The department head shall be responsible for assuring that a current inventory of all items that may be needed during the lockdown is available. If additional supplies are required, staff at Laundry and Food Service Administration and the regional distribution center or minor equipment warehouse shall be contacted for assistance.
- ☒ The department head shall be responsible for contacting the count room for an accurate count of the number of offenders locked down, by housing area, so that the correct number of meals can be prepared and delivered.
- ☒ If no offenders are to be assigned to the department during the lockdown, the department head shall be responsible for coordinating with the warden for additional staff, if available, to assist with meal preparation.
- ☒ The department head, in coordination with building security, shall be responsible for making every effort to assure that offenders with special medical needs are provided the correct meals during a lockdown.



- Documentation of meals served during a lockdown shall be made on the Cook's Worksheet.
(Refer to 03.08 Cook's Worksheet)




**TEXAS DEPARTMENT OF
CRIMINAL JUSTICE**

Food Service Procedures Manual

Number 12.03
Date September 2014
Page 2 of 2
Supersedes March 2010

SUBJECT

LOCKDOWN MEALS

<p>BEVERAGES DURING A LOCKDOWN</p>	<ul style="list-style-type: none"> ➤ In the event of a unit lockdown, if the lockdown does not exceed three days, milk does not have to be served. ➤ If a lockdown exceeds three days, provisions shall be made to provide milk, at least five times per week, to the offenders in lockdown status. ➤ Beverages (tea & punch) should be served during a lockdown, if possible.
	<p>☛ Pork shall not be served during a lockdown, to include a “quarantine lockdown”.</p>
<p>“QUARANTINE LOCKDOWN”</p>	<ul style="list-style-type: none"> ➤ A “quarantine lockdown” refers to a lockdown where a portion(s) of the unit is locked down due to a possible contagious medical condition. ➤ Offenders who are placed on “quarantine lockdown” shall receive the same menu and beverage as provided to general population offenders. ➤ Quarantined offenders shall be fed using disposable trays, utensils and cups. ➤ Trash shall be collected in a disposable plastic trash bag and staff or offenders picking up the trash shall use disposable gloves. ➤ The department head, in coordination with building security, shall be responsible for making every effort to ensure that offenders requiring medical diets or those requesting meat-free trays shall be provided the correct meal during the “quarantine lockdowns”. ➤ Documentation of a “quarantine lockdown” shall be made in the Comment Section of the Cook’s Worksheet with the location and number of offenders fed.





**TEXAS DEPARTMENT OF
CRIMINAL JUSTICE**

Food Service Procedures Manual

Number 09.01
Date September 2017
Page 1 of 2
Supersedes September 2015

SUBJECT

IN-CELL MEAL SERVICE

	<ul style="list-style-type: none"> ➤ Offenders shall receive meals in-cell when unit security or staff and offender safety dictates that this method of meal service shall be used. ➤ Offenders shall receive meals in-cell when the facility does not have a common dining area. ➤ All food must be escorted by staff to in-cell fed areas.
<p>RESPONSIBILITIES OF THE DEPARTMENT HEAD</p>	<ul style="list-style-type: none"> ☑ The department head shall be responsible for assuring that staff responsible for in-cell meal delivery are trained on basic sanitation and proper food handling and meal service. ☑ The department head shall be responsible for assuring that there is adequate and operable equipment for in-cell meal delivery. ☑ The department head shall be responsible for assuring that staff in in-cell fed area(s) have the item(s) they require, such as hair restraints, beard nets, serving utensils and pocket thermometers, for proper meal service and delivery. ☑ The department head shall be responsible for assuring that adequate amounts of bulk food or the correct number of individually portioned trays are provided to each housing area(s) where offenders receive their meals in-cell. ☑ The department head shall be responsible for assuring that all food prepared for in-cell meal service is the correct temperature before leaving the department. ☑ The department head shall be responsible for auditing and inspecting in-cell fed areas according to departmental procedures. ☑ The department head shall be responsible for conducting a visual inspection and communicating with in-cell fed offenders a minimum of one time per week or more as needed to ensure compliance with in-cell feeding policies and procedures. ☑ The department head shall be responsible for assuring that offenders assigned to assist with the feeding process are medically cleared.
	<ul style="list-style-type: none"> 💣 Electrically heated hot food carts and tray delivery carts used to transport food/trays to in-cell fed areas shall be operational and preheated prior to being filled and plugged in immediately upon arrival. 💣 Holding times for trays in tray delivery carts shall be one (1) hour or less for heated cabinets and thirty (30) minutes or less for insulated cabinets.




**TEXAS DEPARTMENT OF
CRIMINAL JUSTICE**

Food Service Procedures Manual

Number 09.01
Date September 2015
Page 2 of 2
Supersedes September 2014

SUBJECT

IN-CELL MEAL SERVICE (cont.)

<p>MENU PLANS AND DIETS</p>	<ul style="list-style-type: none"> ➤ Offenders receiving meals in-cell shall receive the same meal and portions as general population offenders fed in the dining hall to include condiments unless the offender is receiving food loaf or sack meals. ➤ Offenders receiving meals in-cell shall have the opportunity to select a menu plan. (Refer to 13.07 Menu Selection Plan) ➤ Offenders receiving meals in-cell shall be provided appropriate medical diets.
<p>BEVERAGES</p>	<ul style="list-style-type: none"> ➤ Offenders receiving meals in-cell shall receive the same beverage, unless on container restriction, as offenders receiving their meals in the common dining hall. ➤ Beverages shall be dispensed from 5 gallon or 10 gallon beverage dispensers only and served as close to meal time as possible.
	<ul style="list-style-type: none"> ➤ For security reasons, meat for offenders receiving meals in-cell may be deboned or a like alternative may be provided for a bone-in meat item, i.e. a chicken patty may be served in place of a leg quarter or pork roll may be served in place of a pork chop.